IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN INSOLVENCY

NOTICE OF MOTION NO.211 OF 2006
IN
INSOLVENCY PETITION NO.66 OF 2000

Re : Ashok H. Advani. ...Jt.Debtors.
Ex-parte:
ICDS Limited. q ...Petg. Creditor.
....
Mr.U. J. Makhija i/b. Amin Kherade for the Debtor.
Mr. G.R. Mehta for Petitioning Creditor.
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CORAM : DR.D.Y.CHANDRACHUD, J.

December 22, 2006.

P.C.

Mentioned with notice to the Petitioning Creditor. On the request of both the Learned Counsel taken on Board and called out.

Consent Terms were filed on 16th July 2002 in Insolvency Petition No.66 of 2000. Clause (17) of the Consent Terms provides for a self operative consequence of a default on the part of the Debtor in paying instalments that were agreed upon by the parties in clauses (15) and (16) of the Consent Terms. There was default in complying with the schedule for the payment of instalments. Accordingly, by an order dated 5th December 2006,

this Court has observed that the Consent Terms having provided for a self operative consequence, no further directions were necessary since the order of adjudication had ensued.

The present Notice of Motion has been taken out by the Judgment Debtor for recalling the order of this Court dated 5th December 2006 and for necessary directions. Clause (18) of the Consent Terms dated 16th July 2002 inter alia provided as follows :

> "(18) The Petitioning Creditors have the privilege to condone the delay in payment of any instalment/s by accepting late payment thereof (after the due date), if the Petitioning Creditors so desire. The acceptance of payment shall be deemed to be condonation of delay under this clause."

Counsel appearing on behalf of the Petitioning Creditor and the Debtor have now tendered supplementary Consent Terms dated 22nd December 2006. By the aforesaid Consent Terms which are taken on record and marked 'X-1', the Petitioning Creditor has in exercise of the power conferred by clause (18) of the earlier Consent Terms condoned the delay on the part of the Debtor in complying with the Schedule of instalments prescribed by the earlier Consent Terms. A fresh schedule for repayment is agreed upon between the parties in order to obviate a consequence of adjudication of insolvency. Counsel appearing on

behalf of the Petitioning Creditor in the circumstances, states before the Court that his client has no objection if the order of the Court dated 5th December 2006 is recalled and if the supplementary Consent Terms dated 22nd December 2006 are taken on the record of the petition. Accordingly, the Notice of Motion is made absolute in terms of prayer clause (a). In so far as prayer clause (b) of the Notice of Motion is concerned, the supplementary Consent Terms dated 22nd December 2006 shall operate as Consent Terms in the main Insolvency Petition (Petition 66 of 2000).

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